

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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APR 2 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re )  
 )  
 Payment of a Hearing Fee by )  
 )  
 TOM SEABASE )  
 )  
 )  
 Applicant For a Construction )  
 Permit for a New FM Station )  
 on Channel 292A at )  
 Kalispell, Montana )

MM Docket 92-303

File No. BPH-910926MB

To: The Managing Director

**PETITION FOR REFUND OF HEARING FEE**

Tom Seabase ("Seabase"), by his attorney and pursuant to Rule 1.1111(b)(4), hereby requests refund of the \$6,760.00 hearing fee tendered by him in response to the Commission's Public Notice, Report No. NA-155, released December 27, 1991.

1. On February 28, 1992, pursuant to the Commission's Public Notice, supra, and Rule 1.1104(2)(c), Seabase submitted to the Commission a check in the amount of \$6,760.00 together with FCC Form 155, the Fee Processing Form, to cover the requisite hearing fee. See Exhibit A. The Hearing Designation Order ("HDO") in MM Docket No. 92-303, DA 92-1668, released December 23, 1992, designated for hearing the applications of Seabase and the two remaining applicants, Skyline Broadcasters, Inc. ("SBI"), File No. BPH-910925MD, and Cloud Nine Broadcasting, Inc. ("Cloud Nine"), File No. BPH-910926MI. The HDO specified only the standard comparative issues. See Exhibit B. Pursuant to Rule 1.221,

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to appear at the hearing and to present evidence on the specified issues. The Notice also advised that a settlement agreement had been executed by the three remaining parties. See Exhibit C. Simultaneously with the filing of notices of appearances in the case, all three Kalispell applicants filed a Joint Request for Approval of Settlement Agreement contemplating dismissal of both Seabase's and SBI's applications and a grant of Cloud Nine's application.

2. Administrative Law Judge John L. Frysiak granted the Joint Request, approved the Settlement Agreement, Memorandum Opinion and Order, FCC 93M-71, released February 12, 1993, and terminated MM Docket 92-303 by dismissing the Seabase and SBI applications and granting Cloud Nine's application without a comparative hearing. See Exhibit D. That action has become final. In consequence, as a dismissed applicant under an approved universal settlement agreement filed simultaneously with his Notice of Appearance, Seabase meets the criteria for refund of his hearing fee as set forth in Rule 1.1111(b)(4). He therefore respectfully requests that his hearing fee of \$6,760.00 be refunded to him.

Respectfully submitted,

TOM SEABASE

By: 

Richard F. Swift  
His Attorney

TIERNEY & SWIFT  
1200 18th Street, N.W., Suite 210  
Washington, D.C. 20036  
(202) 293-7979  
April 2, 1993

Exhibit A

# FILE COPY

LAW OFFICES

FCC/MELLON

# FEE PROCESSING FORM

FOR  
FCC  
USE  
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

## SECTION I

APPLICANT NAME (Last, first, middle initial)

Seabase, Tom

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

P. O. Box 1407

MAILING ADDRESS (Line 2) (If required) (Maximum 35 characters)

CITY

Polson

STATE OR COUNTRY (If foreign address)  
MT

ZIP CODE

59860

CALL SIGN

OTHER FCC IDENTIFIER

910926MB

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)

(B)

(C)

FEE TYPE CODE

FEE MULTIPLE  
(If required)

FEE DUE FOR FEE TYPE  
CODE IN COLUMN (A)

FOR FCC USE ONLY

(1)

M W R

\$6,760.00

## SECTION II

— To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)

(B)

(C)

FEE TYPE CODE

FEE MULTIPLE  
(If required)

FEE DUE FOR FEE TYPE  
CODE IN COLUMN (A)

FOR FCC USE ONLY

(2)

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\$	
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(3)

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\$	
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(4)

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\$	
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(5)

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\$	
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ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE.  
THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED  
WITH THIS APPLICATION  
OR FILING

\$6,760.00

FOR FCC USE ONLY

RAMDEK COMPUTER SYSTEMS

BOX 1407 883-3448

POLSON, MT 59860

2059

2/26-19-92 93-7082/2929

PAY TO THE  
ORDER OF

FCC

\$ 6760<sup>00</sup>

SIXTY SEVEN HUNDRED SIXTY 2/100

DOLLARS



FIRST FEDERAL

SAVINGS BANK OF MONTANA  
POLSON OFFICE (406) 883-4375

*[Signature]*

MEMO

⑆ 292970825⑆ 030021318⑈ 2059

Exhibit B

Federal Communications Commission

1840  
DA 92-1668

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 92-303

In re Applications of

SKYLINE  
BROADCASTERS, INC.  
(hereafter "Skyline")

File No. BPH-910925MD

TOM SEABASE  
(hereafter "Seabase")

File No. BPH-910926MB

CLOUD NINE

File No. BPH-910924MT

overall tower height above mean sea level (OHAMSL) as 45.1 meters and 1180.5 meters, respectively. However, both Seabase and Cloud Nine have specified the tower's OHAGL as 40 meters and OHAMSL as 1175 meters. Therefore, the applicants are required either to amend the tower height data specified in their respective applications to comply with FCC and FAA records or, if the heights specified in the application are the actual heights, file with the FAA (FAA Form 7460-1) to correct the tower height discrepancy.

4. Additionally, there is a possibility that the proposed FM antennas and transmission lines will disrupt the translator's directional antenna pattern because the FM antennas will be mounted above K240BT's antenna and the proposed FM transmission lines will be placed near K240BT's antenna. Accordingly, Seabase and Cloud Nine must submit an exhibit, including a statement from the K240BT antenna manufacturer, stating that the proposed antenna will have no adverse effect on the translator's directional antenna pattern.

Federal Communications Commission

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That Skyline shall submit the information, specified in Paragraph 2, to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED, That Seabase and Cloud Nine shall submit the information, specified in Paragraphs 3 and 4 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

12. IT IS FURTHER ORDERED, That Seabase shall submit an amendment which contains the information required by Section II, Item 6 of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau

Exhibit C

BEFORE THE

FILE COPY


77 1 60

Presiding Judge grants the applicants' joint request, there will be no need for the parties to appear on the date fixed for hearing and to present evidence on the specified issues.

Respectfully submitted

TOM SEABASE

By:

  
Richard F. Swift  
His Attorney

TIERNEY & SWIFT  
1200 18th Street, N.W.  
Suite 210  
Washington, D.C. 20036  
(202) 293-7979

Date: January 12, 1993

CERTIFICATE OF SERVICE

I, Hazel Y. Goodger a Secretary in the law firm of Tierney & Swift, hereby certify that I have on this 12th day of January, 1993, sent copies of the foregoing "Notice of Appearance" to the following:

- \* The Honorable John M. Frysiak,  
Administrative Law Judge  
Office of Administrative Law Judges  
Federal Communications Commission  
2000 L Street, N.W., Room 223  
Washington, D.C. 20554
- \* Charles Dziedzic, Esquire  
Chief, Hearing Branch  
Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554
- John Joseph McVeigh, Esquire  
Fisher, Wayland, Cooper & Leader  
1255 Twenty-Third Street, N.W.  
Suite 800  
Washington, D.C. 20036  
Counsel for Skyline Broadcasters, Inc.
- Robert Lewis Thompson, Esquire  
Pepper & Corazzini  
1776 K Street, N.W., Suite 200  
Washington, D.C. 20006

Exhibit D

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FCC 93M-71

In re Applications of	)	MM DOCKET NO. 92-303	30867
	)		
SKYLINE BROADCASTERS, INC.	)	File No. BPH-910925MD	
	)		
TOM SEABASE	)	File No. BPH-910926MB	
	)		
CLOUD NINE BROADCASTING, INC.	)	File No. BPH-910926MI	
	)		
For Construction Permit for a New	)		
FM Station on Channel 292A	)		
in Kalispell, Montana	)		

MEMORANDUM OPINION AND ORDER

Issued: February 10, 1993 ; Released: February 12, 1993

1. Under consideration are the following:

Joint Request for Approval of Settlement Agreement, filed January 12, 1993, by Cloud Nine Broadcasting, Inc. ("CNB") Tom Seabase ("Seabase") and Skyline Broadcasters, Inc. ("SBI");

Supplemental Declaration, filed January 25, 1993, by Seabase;

First Amendment to Settlement Agreement, filed February 2, 1993, by CNB, Seabase and SBI;

Letter dated February 8, 1993, from SBI; and

Comments in Support of Joint Request for Approval of Settlement Agreement, filed February 8, 1993, by the Mass Media Bureau ("Bureau").

2. The settlement agreement contemplates the dismissal of the applications of Seabase and SBI and the grant of the application of CNB. CNB would pay the legitimate and prudent expenses of Seabase and SBI in the respective amounts of \$25,000 and \$21,000. In addition, paragraph 7 of the settlement agreement, as amended, calls for the parties to forebear from opposing certain applications of other parties during the next seven years.

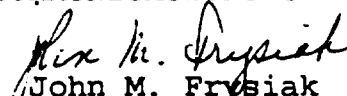
3. Review of the settlement agreement, as amended, and the attachments and supplements reveals that the applicants have filed the documentation required by Section 73.3525 of the Commission's Rules, which implements Section 311(c) of the

Communications Act of 1934, as amended. Specifically, principals of the applicants have stated that the respective applications were not filed for an improper purpose and that grant of the joint request would conserve Commission resources and expedite the provision of a new FM service to Kalispell, Montana.

4. SBI has set forth an itemization demonstrating that its legitimate and prudent expenses incurred in this proceeding are \$21,000, excluding the hearing fee. Accordingly, it is entitled to reimbursement of \$21,000 from CNB. Seabase has set forth an itemization demonstrating that his legitimate and prudent expenses incurred in this proceeding are \$23,996.45, excluding the hearing fee. Accordingly, he is entitled to reimbursement of no more than \$23,996.45 by CNB.<sup>1</sup> Finally, the Bureau is satisfied that paragraph 7 of the settlement agreement, as amended, does not preclude the parties from bringing to the Commission's attention, in the future, information about whether the other parties lack basic qualifications to be a Commission licensee or are not operating a broadcast station in the public interest. See Nirvana Radio Broadcasting Corporation, 4 FCC Rcd 2778 (Rev. Bd. 1989).

Accordingly, IT IS ORDERED that the Joint Request for Approval of Settlement Agreement, as amended, filed January 12, 1993 IS GRANTED; the settlement agreement, as amended, IS APPROVED; the applications of Seabase and SBI ARE DISMISSED, with prejudice; the application of CNB IS GRANTED; and this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

  
John M. Frysiak  
Administrative Law Judge

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<sup>1</sup> Since the settlement agreement does not provide that either SBI or Seabase would return the hearing fee amount to CNB if their hearing fees were refunded by the managing director, the amounts of their approved legitimate and prudent expenses exclude the hearing fee.

CERTIFICATE OF SERVICE

I, Hazel Y. Goodger, secretary in the firm of Tierney & Swift hereby certify that I have on this 2nd day of April, 1993, sent by first-class mail copies of the foregoing Petition For Refund of Hearing Fee to the following:

\* Claudette Pride  
Chief, Fee Section  
Billings and Collection Branch  
Financial Management Division  
Office of Managing Director  
Federal Communications Commission  
Room 452  
1919 M Street, N.W.  
Washington, D.C. 20554

\* Larry Miller, Esq.  
Hearing Branch  
Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
Room 7212  
2025 M Street, N.W.  
Washington, D.C. 20554

Robert Lewis Thompson, Esq.  
Pepper & Corazzini  
1776 K Street, N.W.  
Suite 200  
Washington, D.C. 20006  
Counsel to Cloud Nine Broadcasting, Inc.

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Fisher, Wayland, Cooper & Leader  
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